

FILED  
JAMES BONINI  
CLERK

NOV 28 PM 4:16

JAMES F. ARNETT,

Petitioner,

v.

WANZA JACKSON, Warden,

Respondent

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

CASE NO. C-1-01-157  
(Spiegel, J.; Sherman, M.J.)

MEMORANDUM IN OPPOSITION  
TO RESPONDENT WANZA JACKSON'S  
MOTION FOR STAY OF COURT'S  
OCTOBER 8, 2003 JUDGMENT

Petitioner James F. Arnett respectfully requests this Court to deny Respondent Wanza Jackson's Motion for Stay of Court's October 8, 2003 Judgment for the following reasons:

A. **Respondent incorrectly Argues that she is likely to succeed:**

This Court, on page 7 of its order, found that "... the Magistrate Judge's Report was thorough and well-reasoned, ..." This Court further found that the Magistrate Judge correctly applied the case of United States v. Tucker, 404 U.S. 443 (1972) for the proposition that due process can be violated where a sentencing is "at least in part" based upon an impermissible factor. Finally, this Court made a factual determination that the biblical quote in question was not just "one factor among many" considered by the trial court in sentencing, but rather, it was the final source considered by the trial judge. Therefore, this Court has already determined there to be a clear violation of due process requiring that Petitioner be re-sentenced or released. In doing so this Court disagrees with the unanimous decision of the Ohio Supreme Court, which it finds to be irrefutable.

**B. Respondent will not be irreparably injured absent a stay:**

The granting of the habeas relief was conditional based upon the need for re-sentencing. The State of Ohio need only sentence Petitioner anew and comply with due process in that proceeding. If the original sentence was correct, as Respondent argues, then a comparable sentence will result. However, if sentencing was unjust it is in the State of Ohio's interest that the correct sentence be imposed.

**C. Petitioner will be substantially injured by a stay:**

The injury to Petitioner is plain. James Arnett has served almost six (6) years of a fifty-one (51) year consecutive sentence of five (5) years each on ten counts of rape and one (1) year on an additional count of pandering. Had the trial court not considered her bible, presumptively, she would have rendered a more lenient sentence. A concurrent sentence would have resulted by now in the release of Petitioner. See, Ohio Revised Code 2929.41(A) (Wherein it is stated that: "Except as provided in division (B) of this section, division (E) of section 2929.14, or division (D) or (E) of section 2971.03 of the Revised Code, a sentence of imprisonment shall be served concurrently with any other sentence of imprisonment imposed by a court of this state . . .".)

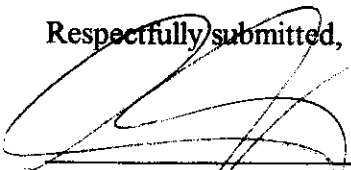
**D. The public interest is not protected by a stay:**

At some point in the future Mr. Arnett will be released from prison, barring some unforeseen event. Respondent argues that his release would be contrary to public interest because of the nature of the crime for which he was convicted. This argument assumes that Petitioner was correctly sentenced in the first instance. If in fact upon re-sentencing Mr. Arnett receives a lesser sentence, then it must be presumed that the Court took into consideration whatever danger Mr. Arnett posed to the public and put into effect whatever safe guards were necessary upon his

release, such as, registration as a sexual predator. In any event, whatever protection the public would have upon re-sentencing will be the same that exists upon Mr. Arnett's eventual release.

If Mr. Arnett's release into society is the result of a new sentencing hearing then it is the just result.

Respectfully submitted,



---

Charles H. Bartlett, Jr. (0017609)  
Counsel of Record for Petitioner  
917 Main Street, Suite 300  
Cincinnati, Ohio 45202  
(513) 977-4212  
Fax: (513) 977-4218  
E-Mail: lawyerchb@aol.com

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was served upon Respondent by ordinary U.S. mail directed to her attorney, Mr. Stuart A. Cole, Assistant Attorney General, 140 E. Town Street, 14<sup>th</sup> Floor, Columbus, Ohio 43215 this 28<sup>th</sup> day of November, 2003.



---

Charles H. Bartlett, Jr. (0017609)  
Counsel of Record for Petitioner